HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1623 of 2002 (SB)

Jaiprakash & others vs. Divisional Forest Officer & others

Approved for reporting.

~~Not approved for reporting~~

Date of decision 31.12.2003

Initial of Judge

HIGH CORUT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1623 of 2002 (SB)

Jaiprakash & others ……. Petitioners

Versus

Divisional Forest Officer, Mussoorie
& others ……. Respondents

Sri M.C. Pant, Advocate for the petitioners
Standing Counsel for the respondents.

Dated: 31.12.2003

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties at length.

The petitioners have filed the present writ petition for the issue of a writ, order or direction in the nature of mandamus directing the respondents to treat the petitioners as regular employee of the department and pay them salary as it is being given to the regular employees of the department in the corresponding cadre.

Brief facts giving rise to the present writ petition are that the petitioners were appointed on daily wages in Forest Division Mussoorie and they are continuously working in the Forest Department till today.

The petitioners have stated that after the lapse of considerable period respondents have not passed any order regarding their regularization. The said action of the respondents amounts to the denial of the claim of the petitioners. Hence the writ petition.

The Apex Court has held in the case of Daily Rated Casual Labour vs. Union of India (1998) 1 SCC 122 as under:

"India is a socialist republic. It implies the existence of certain important obligations which the State has to discharge. The right to work, the right to free choice of employment the right to just and favourable conditions of work, the right to protection against unemployment, the right of everyone who works to just and favourable remuneration ensuring a decent living for himself and his family, the right of everyone without discrimination of any kind to equal pay for equal work, the right to rest, leisure, reasonable limitation on working hours and periodic holidays with pay, the right to form trade unions and the right to join trade unions of one's choice and the right to security of work are some of the rights which have to be ensured by appropriate legislative and executive measures. It is true that all these rights cannot be extended simultaneously. But they do indicate the socialist goal. The degree of achievement in this direction depends upon the economic resources, willingness of the people to produce and more than all the existence of industrial peace throughout the

country. Of those rights the question of security of work is of utmost importance. If a person does not have the feeling that he belongs to an organization engaged in production he will not put forward his best effort to produce more. That sense of belonging arises only when he feels that he will not be turned out of employment the next day at the whim of the management. It is for this reason it is being repeatedly observed by those who are in charge of economic affairs of the countries in different parts of the world that as far as possible security of work should be assured to the employees so that they may contribute to the maximization of production. It is again for this reason that managements and governmental agencies in particular should not allow the workers to remain as casual labourers or temporary employees for an unreasonable long period of time."

The leaned counsel for the petitioner has also referred the judgment of Apex Court in the case of State of U.P. & others vs. Putti Lal 2002(1) E.L.C. 524 (SC). In that case it has been held that daily wagers would be entitled to draw at the minimum of the pay scale being received by their counter part in the Government and the question of their regular absorption will obviously be dealt with in accordance with the statutory rule. The order is mutates mutandis apply to the State of Uttaranchal as held by the Apex Court as under:

"So far as the State of Uttaranchal is concerned, a scheme for regularization of daily workers has been produced before us which prima facie does not appear to be objectionable excepting the provision regarding qualification for regularization. Be it stated that the qualification essential for being regularised would be the qualification as was relevant on the date a particular employee was taken in as a daily wager and not the qualification which is being fixed under the scheme. The fact that the employees have been allowed to continue for so many years indicates the existence or the necessity for having such posts. But still it would not be open for the court to indicate as to how many posts would be created for the absorption of these daily wages workers. Needless to mention that the Appropriate Authority will consider the case of these daily wagers sympathetically who have discharged the duties for all these years to the satisfaction of their authority concerned. So far as the salary is concerned as we have stated in the case of State of Uttar Pradesh, a daily wager in the State of Uttaranchal would be also entitled to the minimum of the pay scale as is available to his counter part in the Government until his services are regularised and he is given regular scale of pay."

After the judgment of the Apex Court, Uttaranchal Government has framed Recruitment Rules of 2003 in accordance with the

directions of the Apex Court known as Regularisation (On Group “D” Posts) of Daily Wages Appointment Rules, 2003. The criteria for regularization has been mentioned under Rule 4 (1), which reads as under:

(1) *Any person who:-*

(a) was directly appointed on daily wages basis on a Group “D” post in the Forest Department under Government service before June 29, 1991 and in continuing in service as such on the date of commencement of these rules; and

(b) possessed requisite qualification prescribed for regular appointment for that post at the time of such appointment on daily wage basis under the relevant service rules, shall be considered for regular appointment in permanent or temporary vacancy, as may be available in the Forest Department in Group “D” post, on the date of commencement of these rules on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant service rules or orders.”

In view of the facts and circumstances mentioned above, the respondents are directed to consider the claim of the petitioners for regularization in accordance with Regularisation (On Group “D” Posts) of Daily Wages Appointment Rules, 2003, within a period of six weeks after the filing the certified copy of the order.

With the aforesaid observations, the writ petition is disposed of. No order as to costs.

31.12.2003
Dhyani **Rajesh Tandon, J.**